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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1375

TEXAS EASTERN TRANSMISSION CORPORATION,
Petitioner,

vs.

FEDERAL POWER COMMISSION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Brief for The People of the State of California and the Public Utilities Commission of the State of California in Opposition

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Pursuant to Rule 24 of the Revised Rules of the Supreme Court, the People of the State of California and the Public Utilities Commission of the State of California (California), respondents in opposition, hereby submit their brief

in opposition to the petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit filed by Petitioner Texas Eastern Transmission Corporation (Texas Eastern) on March 30, 1970. California was a party to the proceeding in the court below whose judgment is sought to be reviewed and is therefore a party respondent in this Court under Rule 21(6) of the Revised Rules of the Supreme Court.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

1. Does Section 4(e) of the Natural Gas Act govern the disposition of refunds resulting from the disallowance of supplier rate increases paid by a pipeline company but not made the subject of a tracking rate increase by such pipeline company?

2. May the Federal Power Commission (Commission) order flow through of supplier refunds, applicable to a past period, where the pipeline company has failed to show that its earnings in such past periods resulted in less than a reasonable return?

3. Assuming that Section 4(e) of the Act does not specifically govern the disposition of supplier refunds, is an order of the Commission requiring flow through of such refunds to customers of the pipeline inconsistent with equitable principles as enunciated by this Court in *Federal Power Commission v. Interstate Natural Gas Company*, 336 U.S. 577 (1949)?

4. May the Commission order flow through of supplier refunds applicable to past periods where, prior to such order, refunds were not required to be flowed through if the

pipeline company had not applied for tracking rate increases?

5. Do the settlement agreements involved in this case govern the disposition of the supplier refunds not expressly disposed of in those agreements?

6. Where the Commission lacks jurisdiction to order the flow through of supplier refunds directly into the hands of ultimate consumers, does this jurisdictional limitation require a conclusion that a pipeline company must be permitted to receive and retain such refunds?

STATUTE INVOLVED

The pertinent provision of the Natural Gas Act, 15 U.S.C. 717c(e), is set forth in the petition at pp. 25-26.

STATEMENT

A. Regulatory Development Leading to the Instant Case.

In the matter of *Hunt Oil Company,* 30 FPC 220, 222 (1963), the Commission recognized that some interstate pipeline companies might take the position that they were not under any obligation to flow through to their customers certain refunds from gas suppliers, and indicated that it was disturbed by the possibility of a gap in the refund line. Subsequently, in *Humble Oil & Refining Company,* 32 FPC 49, 52 (1964), the Commission ordered producers of natural gas to retain amounts refundable by them pending further Commission order. The Commission declared:

> "But in view of our duty to insure that the ultimate consumers of gas actually receive all of the benefits of our rate regulation to which they may be entitled, we shall take action here to assure that, within the limits of our jurisdictional reach, the refunds to be ordered actually flow to those parties legally and equitably entitled thereto."

B. The Commission's Order Instituting the Proceeding and the Petitioner's Attempt to Obtain Judicial Review of That Order.

By its Order Setting Hearing on Refunds issued October 4, 1965 in Docket No. RP66-12 (R. 666-674A), the Commission instituted the proceeding that gave rise to the orders which this Court is now being asked to review (R. 734-776). The question before the Commission was whether Texas Eastern was entitled to receive and retain money collected from it by its jurisdictional gas suppliers which the suppliers had been directed to refund with interest. In the order of October 4, 1965, the Commission noted that staff studies indicated that Texas Eastern had earned, without regard to the claimed refunds, a jurisdictional return of 6.85 percent in 1962, 7.25 percent in 1963, and 7.81 percent in 1964 (R. 670, 674A). The order further observed that 6.5 percent was the highest overall rate of return ever allowed a major pipeline company by the Commission.

The Commission order also stated:

> "... Section 4 of the Act does not in terms provide to whom any refunds we might decide to order should be paid, and that a failure to track a supplier's increase does not necessarily mean that a pipeline has absorbed any cost increase over that upon which its rates were based *since it may well be that such increase has been offset by other purchased gas* or *other cost decreases,* or by *increased sales having the effect of reducing the unit costs.*" (R. 670-671; emphasis added.)

It was further noted that just because Texas Eastern had not bound itself to flow through any refunds resulting from these particular increases does not in itself grant Texas Eastern any rights to secure and retain such refunds (R. 671).

In response to Ordering Paragraph (B) of the Commission's October 4, 1965 Order (R. 672), Petitioner filed a special report showing a rate of return of 6.38 percent for 1962, 6.46 percent for 1963, and 6.43 percent for 1964, utilizing a 6.5 percent rate of return. Petitioner filed the report under protest disclaiming the Commission's jurisdiction to require such a report (R. 675-679).

Texas Eastern attempted to obtain judicial review of the Order of October 4, 1965 and of certain refund retention orders. Its petitions were denied as premature by the Court of Appeals for the Fifth Circuit. *Texas Eastern Transmission Corp. v. Federal Power Commission,* 357 F.2d 232 (5th Cir. 1966). Upon remand to the Commission the subsequent proceedings culminated in Opinion No. 540 (R. 734-768) which found that Petitioner had not established its entitlement to receive and retain all of the subject refunds. Opinion No. 540-A (R. 770-776) denied applications for rehearing of Opinion No. 540.

C. Proceedings on Remand and the Commission's Decision.

The Commission staff put in evidence (R. 583-606) studies indicating that for the years 1962, 1963 and 1964, Petitioner had realized rates of return of 6.59, 6.81 and 6.91 percent, respectively, not including the refunds claimed by Petitioner (R. 586). A staff expert had testified that a reasonable rate of return for the years 1962, 1963 and 1964 was 6.25 percent (R. 559).

Because this was a case of first impression, Petitioner was given the opportunity to show in the proceedings its version of its rate of return for the years in question. However, Texas Eastern countered that its rate of return was irrelevant and offered no contrary evidence, did not challenge the accuracy of the staff's calculations (R. 414, 688),

and asserted that it was entitled to all refunds which it was not expressly bound to flow through as listed in Appendix C of the 1961 settlement agreement (R. 320-323; 415, 416).

Petitioner also contended that where a supplier of natural gas files a rate increase, Section 4(e) of the Natural Gas Act permits such rate increase to be put into effect and collected subject to refund from the pipeline-purchaser. Petitioner argued that for more than 25 years after the Act was passed in 1938, the Commission uniformly ordered all such refunds paid to the pipeline which had "absorbed" the increased supplier rates but had not filed tracking rate increases. Petitioner argued that the subject refunds were created before the Commission changed this policy. Therefore, it would be unfair to Petitioner for these refunds to be flowed through under the Commission's newly announced policy.[1]

In Opinion No. 540, the Commission rejected Petitioner's contentions. The Commission's Opinion cited substantial authority that the Natural Gas Act was enacted to protect the ultimate consumer of natural gas from excessive charges and that it provides a "complete, permanent and effective bond of protection", for ultimate consumers who are the intended beneficiaries of rate regulation.[2] It is their collective interest which must guide the way when the Act is applied and in this case it is the ultimate consumers of natural gas who are the proper beneficiaries of the disposition of the subject refund (Op. No. 540, R. 746).

It was held that Petitioner's failure to exercise its statutory right to track its suppliers' rate increases by filing rate increases of its own does not as a matter of law support

1. (R. 413-420; Petition, p. 3).

2. *Atlantic Refining Company v. Public Service Commission of New York*, 360 U.S. 378, 388 (1959).

Petitioner's claim to refunds ordered in the supplier rate proceedings (Op. No. 540; R. 748, 749).

The Commission concluded that the accounting provision in Section 4(e) does not expressly state to whom such refunds should go.

Since Petitioner had not refuted evidence that it would have earned amounts greater than a reasonable rate of return if it had been allowed to keep the refunds, it was held that the refunds should flow through to the ultimate consumer. The Commission also stated that although the subject refunds were created before the Commission's new policy was announced, Petitioner's risk-free opportunity granted by the Commission to show what might have happened had Petitioner known of the new policy was fair and therefore Petitioner had a reasonable opportunity to prove its claim to the refunds.

A petition for rehearing was denied (Op. No. 540-A; R. 770-776).

D. The Decision of The Court of Appeals.

Petitioner next appealed to the United States Court of Appeals for the Fifth Circuit which affirmed in whole the Commission's decision. *Texas Eastern Transmission Corp. v. Federal Power Commission,* 414 F.2d 344 (1969). The court held that the Commission had the necessary statutory power for the action it took in Opinion No. 540, the overriding purpose of the Act being to protect consumers in their purchase of gas to the end of keeping rates as low as possible (414 F.2d at 347). It was held that the accounting provision of Section 4(e) of the Act does not require payment of refunds only to those persons in whose behalf such amounts were paid, but instead, the refunds are payable to the ultimate consumer whose interests it is the

purpose of the Act to protect. To return them to Texas Eastern,

> "... by virtue of their having paid and absorbed them would be to countenance ratemaking by producer-suppliers and Texas Eastern outside the protective ambit of § 4(e). This approach would do violence to the statutory scheme by avoiding, to the extent that the refunds exceed a fair return to Texas Eastern, any rate regulation whatever except under § 5 of the Act. 15 U.S.C.A., § 717d." (414 F.2d at 348.)

The court concluded that the Commission was not barred by its past actions from adopting a new refund policy. This was simply another step in the gradual development of the Act. Moreover, the 1961 settlement order did not bar the refunds since it did not involve the refunds at issue (414 F.2d at 349).

The court found that the order was rationally based in that it protected the consumer to the extent of the Commission's power by placing the refunds within the jurisdiction of the state regulatory authorities so as to put them in a position to benefit the ultimate consumer. Without this policy there would be no way to benefit the ultimate consumer. Accordingly, Texas Eastern had lost on the merits (414 F.2d at 350).

Upon denial of a petition for rehearing in the Court of Appeals (R. 793), Petitioner seeks a writ of certiorari in this Court.

CALIFORNIA'S POSITION

In settling certain proceedings before the Commission involving El Paso Natural Gas Company (El Paso) and Transwestern Pipeline Company (Transwestern), California sought and obtained the stipulations and agreements of El Paso and Transwestern, which were approved by

orders of the Commission, that the disposition of certain supplier refunds shall be governed by the applicability of such principles as may be finally established in the proceedings before the Commission in *Texas Eastern Transmission Corporation,* Docket No. RP66-12. This is the proceeding as to which Petitioner now seeks review in this Court. California was a party in that proceeding and in the court below and opposes Petitioner in the present proceeding.

It would be ironic indeed if these refunds should be diverted to pipeline companies, the one group which, as a whole, has taken a spectator approach to the problem of just and reasonable producer rates. California believes that if, by not filing tracking rate increases following supplier rate increases, interstate pipelines are permitted to retain refunds from suppliers ordered by the Commission, the ultimate consumer of natural gas, the intended beneficiary of federal regulation of this industry, is deprived of the fruits of regulation. The potential gap in the refund line involved in this proceeding affords an opportunity to all pipelines to frustrate the purpose of the Natural Gas Act.

ARGUMENT

1. The Commission Has Power to Order Flow Through of Supplier Refunds Where the Pipeline Shows No Resulting Loss.

Petitioner bases its claim to refunds on the theory that because it paid and "absorbed" higher supplier rates subsequently disallowed, it is therefore entitled to the refunds. This totally ignores a basic principle of utility regulation, that in return for a protected operating right a utility is allowed a fair rate of return as determined by the regulatory body, thus freeing the utility from the risks experienced in a competitive environment. The purpose of this

type of regulation is to bring the utility's service to the public at the lowest price reasonably possible.

Because the instant case was one of first impression before the Commission, Petitioner was given a risk-free opportunity to show what its earnings might have been had it filed for a tracking rate increase (R. 755). Petitioner chose not to do this; neither did it challenge the figures submitted by the Commission staff showing that, had Petitioner filed for an increase, it might well have been ordered to reduce its rates (Pres. Exam. Op., R. 688). By not filing for a rate increase it appears Petitioner placed itself in a position to enjoy an even more excessive rate of return than that which the evidence indicated it was already enjoying.

The purpose of the Natural Gas Act is to protect ultimate consumers of natural gas from excessive charges.[3] The ultimate consumers are the intended beneficiaries of rate orders by the Federal Power Commission, though state machinery might have to be invoked to attain complete enforcement at the consumer level. Rates set by the Commission or by the companies themselves are presumed to be reasonable and not so low as to entitle the pipeline company to supplier refunds as a matter of law. When looking to the rightful claimants of a gas supplier refund, the responsibility cannot be discharged by payment of the fund to those who show no loss by withholding of the fund. *FPC v. Interstate Natural Gas Co.*, 336 U.S. 577, 581, 582 (1949).

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3. *FPC v. Interstate Natural Gas Co.*, 336 U.S. 577 at 581 (1949); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 at 610, 612 (1944); see also the cases cited in the decision sought to be reviewed, *Texas Eastern Transmission Corp. v. FPC*, 414 F.2d 344, 347 (1969).

Here, if Petitioner had filed a tracking rate increase to pass the supplier rate increase on to its customers, the evidence indicates that Petitioner might not have been granted the tracking increase and therefore would not have been entitled to retain the refund. Thus, Petitioner made no showing of a loss as required by *Interstate.*

To let Petitioner, by virtue of remaining silent, keep refunds which may be in excess of a reasonable return as determined by the Commission under the Natural Gas Act appears to frustrate the purpose of the Act. As the court below stated:

> "... To adopt Texas Eastern's position that it is, *ipso facto,* entitled to the refunds by virtue of having paid and absorbed them would be to countenance rate making by the producer-suppliers and Texas Eastern outside the protective ambit of § 4(e). This approach would do violence to the statutory scheme by avoiding, to the extent that the refunds exceed a fair return to Texas Eastern, any rate regulation whatever except under § 5 of the Act. 15 U.S.C.A. § 717d." (414 F.2d at 348)

Accordingly, it is clear that the Commission has the power to order such refunds to the pipeline's customers or other claimants where the pipeline has not demonstrated entitlement to the funds or a reduction of earnings below a reasonable return. If this were not so, it would seem the Natural Gas Act would be applied in favor of the pipeline companies rather than the consumer.

But of even greater importance than the risk-free chance given Petitioner to demonstrate loss is Petitioner's decision —prudently made, one must assume—not to file tracking rate increases. This decision by itself should be sufficient to support a finding that Petitioner would incur no injury if

it is not permitted to retain future supplier refunds. As the Commission held:

> ". . . However, in any event, assuming the majority viewpoint in *Interstate* is governing herein, we will resolve the question not reached by the Court by holding that neither the letter nor spirit of the Act requires a pipeline which has chosen not to file tracking increases, where its suppliers have filed rate increases, to get a risk-free second chance to demonstrate its need for greater revenues in the proceedings to dispose of its suppliers' refunds." (Op. No. 540, R. 753.)

California submits that the Commission's orders herein are not only consistent with the purpose of the Natural Gas Act but are also in accord with principles of equity.

2. Section 4(e) of the Natural Gas Act Does Not Require Payments of Refunds to Any Particular Party.

Petitioner relies on *FPC v. Sunray DX Oil Co.*, 391 U.S. 9 (1968), for an explanation of the accounting provision in Section 4(e) of the Natural Gas Act, in support of its claim to the refunds. While the section requires suppliers to keep detailed accounts of amounts received by reason of rate increases, specifying by whom and in whose behalf such amounts were paid, the section clearly does not say to whom such amounts should be paid upon distribution of refunds created by disallowance of supplier rate increases.

Sunray surely does not hold that the accounting provisions of Section 4(e) require the payment of supplier refunds to the party who had paid the supplier rate increase. In *Sunray* this Court looked to the accounting provisions of Section 4(e) as a basis for its holding that only the rate increase is subject to refund in whole or in part under that section.

As pointed out by the court below, express wording directing disposition of such refunds was omitted from the Natural Gas Act (414 F.2d at 348). The court stated:

> "Our view is that the Commission was authorized to see to disposition of the refunds in question on the basis of the purpose of the Act, to protect ultimate consumers of natural gas."

The conclusion of the court below that Section 4(e) does not prevent the Commission from ordering a flow through of refunds is sound and should not be disturbed.

3. The Commission's Decision Does Not Order Reparations.

Petitioner's claim that the order violates the prohibition against reparations, reaffirmed in *Sunray,* 391 U.S. 9, 24 (1968), seems to miss the issue. It is not Petitioner's rates that are at issue. These rates remain intact. As announced in *Interstate:*

> ". . . it is not ratemaking to determine the equity of the claim of the pipeline companies to the fund. . . . The reasonableness of rates charged by the companies who claim the fund is wholly ancillary to the problem of determining what claimants are equitably entitled to a share in it." (336 U.S. 582, 583.)

Here the issue is to dispose of supplier refunds and not to require Petitioner to adjust its past rates in any manner.

4. The Commission's Decision Does Not Conflict With Interstate or Other Cases Bearing on the Issues.

Petitioner claims that the decision sought to be reviewed is in conflict with *Interstate, supra,* and its progeny, relying on *Northern Natural Gas Co. v. FPC,* 215 F.2d 892 (8th Cir. 1954) and *United Fuel Gas Co. v. FPC,* 367 F.2d 34 (4th Cir. 1966).

We have already pointed out that the Commission's order is not in conflict with the equitable principles which governed this Court's decision in *Interstate*. The Commission's order was made in furtherance of the purpose of the Natural Gas Act and fairly directs refunds toward ultimate consumers. Texas Eastern does not, because it cannot, claim that its rates were so low that it is entitled in equity to the supplier refunds.

The *Northern Natural* case appears to provide some support for Petitioner's argument that a party who has "absorbed" a refund, by not passing on the rate increase from which the refund arises to its customers, is entitled to receive and retain the refund. In *Northern Natural*, the court addressed itself to the distribution of a fund built up during a judicially ordered stay. As to Northern's customers who "have made a showing that they have made no increases to their customers of any kind during the period of the stay, and so have not passed along the amount paid by them to Northern under the stay . . .", the court held that such customers of Northern were entitled to retain the refund. However, the court did not focus on the question of whether local regulatory agencies would have permitted these distributors to pass on the increases. In its stay order, the court stated in part:

> " 'The present direction of such payment has been made because the situation, on the hearing of the motion for stay, impressed as being one in which disposition of the question of the validity of the Federal Power Commission's order would be capable of being effected in this Court within a comparatively short period of time, so that the stay order as such would not in any event have to be continued long in effect; that it further seemed likely that the utility distributing companies would not have been able during that period to have secured generally from all of the local

city councils or other regulatory bodies involved [i.e. those having jurisdiction over the rates of the utility distributing companies], authority to make corresponding increases in their present rates, enabling them to pass on fully to ultimate consumers as a class the amount of the increase paid by them to Northern Natural during the stay period; and that in these circumstances and under these conditions, even if some part of the increase paid to Northern Natural might have been able to be passed on by some utility distributing company to some ultimate consumers the amount involved as to any such ultimate consumers individually for such brief period would be so small as not to warrant the Court, as a matter of practical judicial administration and in relation to the inabsoluteness inherent anyway in any utility charges [of a distributor subject only to local regulation in its rates] of assuming the burden of sifting out such individual ultimate consumers and attempting to make a trivial or nominal distribution to them.'" (215 F.2d at 897.)

The above language seems to indicate that the court was under the impression that the rate increase from which the refunds arose would have been permitted to be passed on to ultimate consumers had there been sufficient time for local regulatory agencies to take such action. But, California submits, no such assumption is proper. It should not be assumed that the "absorption" of a rate increase is a choice made by a utility to its own disadvantage and that the way is always clear to pass on the increase to the ultimate consumer. Rather, it should be assumed that a failure to take action to pass on the increase is a voluntary act of the utility presumably made in its own interest. California therefore submits that *Northern Natural* should not be followed.

In *United Fuel, supra,* the court deals with petitions by United to release the funds now in question. In denying the petitions the court relied on *Texas Eastern Transmission Corp. v. FPC,* 357 F.2d 232, (5th Cir. 1966) which dismissed as premature Petitioner's attempt to obtain judicial review of the Commission order instituting Docket No. RP66-12.

The *United* case does not appear to conflict with *Interstate* or the present decision. Rather, it appears to be consistent with *Interstate* and *Texas Eastern, supra,* in holding that it is for the Commission to determine how the funds should be distributed before such disposition can be review by the courts.

The holding in *Texaco, Inc.,* 27 FPC 847 (1962), cited by Petitioner, merely reflects the Commission practice before the instant case. However, a prior administrative interpretation does not prevent an agency from modifying an earlier practice. *American Chicle Co. v. United States,* 316 U.S. 450, 455 (1942). A rule to the contrary could result in the perpetuation of past errors. *Phillips Petroleum Co. v. Wisconsin,* 347 U.S. 672, 678 fn. 5 (1954).

5. The Commission's Decision Does Not Illegally Apply a Retroactive Change in Established Disposition of Refunds Under Section 4(e).

Petitioner does not dispute the holding of the court below that the Commission was not precluded from adopting a new policy toward supplier refunds where the pipeline had not filed tracking rate increases (Petition, p. 20). Petitioner contends, however, that the Commission could not retroactively apply the new policy to it.

It was for this reason that Petitioner was given the opportunity to show, risk-free, what it would have shown had it filed a tracking rate increase application. Petitioner chose not to avail itself of this opportunity. Moreover,

Petitioner chose not to challenge the Commission staff evidence that it was enjoying more than sufficient earnings. And, as the Commission pointed out:

> "... Texas Eastern has not even excepted to the Examiner's conclusion, fully supported by the record, that in each of the three years in issue Texas Eastern in fact earned substantially more than a reasonable rate of return on its investment. Under these circumstances there is no merit to the contention that it is inequitable to apply the policy enunciated in this decision to Texas Eastern." (Op. No. 540; R. 754-755.)

6. The Settlement Agreements Did Not Expressly Provide That Petitioner Is Entitled to Retain the Supplier Refunds at Issue.

Petitioner argues that it is entitled to the refunds at issue by virtue of specific provisions in settlement agreements which dictate this result.[4] It is California's understanding that the settlement agreements do not govern the issue and that there is no question here of undermining settlement agreements approved by the Commission. Any issue regarding these agreements is one of construction and interpretation of the contracts. Therefore, California contends that neither the order of the Commission nor the decision of the court below have an adverse impact on settlement contracts.

7. The Commission's Lack of Authority to Order the Payment of Refunds Directly to Ultimate Consumers Provides No Basis for Overturning Its Order in This Case.

Although Petitioner does not specifically allege that the Commission's lack of authority to order the payments of refunds directly to ultimate consumers is a ground for reversing its refund order in the instant matter, the ob-

4. Petition, pp. 23-24.

servation is made that "the Commission ordered the refunds paid to Texas Eastern's distribution company customers even though a substantial portion of the refunds will not be flowed through to consumers but will be retained by such distribution company customers."[5] As the court below stated:

> "The essence of Texas Eastern's approach is that a rational basis was lacking due to the dilemma posed by the Natural Gas Act in that the Commission has no authority over the ultimate disposition of the refunds by the distributors. The rates of the distributors are regulated by the states and whether the ultimate consumers will receive the refunds is withn the province of the state regulatory bodies. Federal Power Commission v. Interstate Natural Gas Company, supra; Central States Electric Company v. City of Muscatine, 1945, 324 U.S. 138, 65 S.Ct. 565, 89 L. Ed. 801. The Commission noted the limitation on its jurisdiction in this respect but assumed that the state regulatory authorities would discharge their respective responsibilities to benefit consumers. It pointed out that the regulatory commissions of California and New York had made clear their intentions in this regard. The Commission's view was that it was serving the statutory purpose of the Act of benefiting ultimate consumers by placing the refunds within the jurisdiction of the state regulatory authorities so as to place them in position to benefit the ultimate consumers. The Commission could not guarantee benefits for the ultimate consumers but absent its new policy there would be no way to benefit the ultimate consumers. We conclude that this was a rational basis for the Commission refund order. It was an approach to effective Federalism within framework and dictates of the Act." (414 F.2d at 350.)

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5. Petition, p. 9.

Although the jurisdiction of the Commission does not appear to reach the ultimate consumer, surely this fact does not relieve the Commission of its responsibility to administer its refund authority under Section 4(e) by doing all that is possible within its power to achieve the Act's purpose. Where the thrust of the Federal authority leaves off, it is for the state authority to take over so that the benefits of the Act extend to the ultimate consumer in one unbroken line.

California has never permitted Natural Gas Act refunds to be diverted from the intended beneficiaries of that Act —ultimate consumers. To have done otherwise would have been to frustrate the purpose of the Act upon reaching the final step necessary to its completion.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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